

AMENDMENTS TO 454 CMR 22.00

DELEADING AND LEAD-SAFE RENOVATION REGULATIONS

Attached is a copy of proposed amendments to 454 CMR 22.00, Deleading and Lead Safe Renovation Regulations. An explanation of the proposed amendments follows.

Background

In July of 2010, DLS promulgated amendments to 454 CMR 22.00, Deleading and Lead-Safe Renovation Regulations, to establish standards for renovation, repair and painting work that disturbs paint in target housing and child-occupied facilities built before 1978, which parallel similar requirements of the federal Environmental Protection Agency (“EPA”). DLS received authorization from the EPA to administer and enforce the standards for renovation, repair and painting work set forth in 454 CMR 22.00, in lieu of the federal standard being enforced by the EPA in Massachusetts.

On July 15, 2011, EPA finalized a new rule, *Lead: Clearance Testing Requirements for the Renovation, Repair and Painting Program* (“Clearance Rule”), which amends EPA’s lead safety renovation standards. States, including Massachusetts, which have received authorization from the EPA to administer and enforce the lead safety standards for renovation, repair and painting work, are required to incorporate the provisions of the EPA Clearance Rule **no later than October 4, 2013**. The attached revisions incorporate provisions of the EPA Clearance Rule, as applicable.¹

In addition to the EPA mandated changes, DLS has reviewed and incorporated amendments to address issues raised by staff and stakeholders during the three years that the Deleading and Lead-Safe Renovation Regulations have been in effect.

The proposed amendments to the Deleading and Lead Safe Renovation Regulations do not create new or amended fees. DLS does not anticipate that the proposed amendments will generate significant stakeholder interest or be deemed newsworthy. Governor Patrick has called for investments in education, including universal access to high-quality early education for Massachusetts’ youngest residents. The Administration has a commitment to ensuring that young children are given every opportunity to succeed. Exposure to lead is a serious risk for young children’s health. Lead-based paint and lead contaminated dust are the main sources of

¹ For example, the Clearance Rule requires that states adopt enforcement mechanisms, including civil penalty authority, to ensure compliance with the Lead Safe Renovation Rule. Because Massachusetts already has this authority, at 453 CMR 9.00, it is not necessary to amend 454 CMR 22.00 in this respect.

exposure for lead in U.S. children. Lead poisoning is a major, preventable environmental health problem for both children and adults. In children, it may cause developmental problems, lower IQ, behavioral problems, language delay, anemia, damage to the nervous system and other problems. High lead levels in adults can cause high blood pressure, headaches, memory problems, kidney damage, irritability, difficulty sleeping, nerve disorders, muscle or joint pain and damage to the reproductive system. Public health problems related to lead poisoning results in billions of dollars in health care costs to taxpayers and the government. The Commonwealth's Deleading and Lead Safe Renovation Regulations support the Patrick Administration's initiatives for ensuring that children are able to learn and grow to their maximum potential during their pre-formal schooling years, which will greatly influence their future in a very positive way.

Proposed Amendments

The proposed amendments to 454 CMR 22.00 include the following EPA mandated changes:

- Inclusion of the following EPA definitions:

Painted Surface. A component surface covered in whole or in part with paint or other surface coating.

Renovation. The modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces. The term renovation includes, but is not limited to, the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity such as sanding, scraping, or other such activities that may generate paint dust); the removal of portions of structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement.

- 454 CMR 22.08(4)(a)5. Inclusion of EPA requirements for trainers who wish to employ electronic learning for the classroom portion of the training courses.
- 454 CMR 22.11(1)(i) and 22.11(2)(e)1. Inclusion of EPA clarification that certain prohibited practices, such as using an open flame or torch, apply to all painted surfaces – not just lead painted surfaces.
- 454 CMR 22.11(5)(e). Inclusion of EPA new requirement for “vertical containment” to prevent any lead dust or debris from migrating to abutting properties. Our current regulation requires that contractors prevent such migration but does not prescribe the use of vertical containment.
- 454 CMR 22.13(2)(c)3. Inclusion of EPA record keeping and reporting requirements for collection of paint chips.

The proposed amendments include the following additional changes as seen fit by DLS:

- Inclusion of the following definitions:

Certified Firm. An entity that has been certified by the EPA in accordance with 40 CFR 745.89 to carry out renovation work in states that have not received EPA authorization to administer and enforce their own lead renovation regulations pursuant to 40 CFR 745, Subpart Q.

Containment. An enclosure or barrier constructed of plastic sheeting, gypsum board, plywood, metal sheathing or similar smooth, impermeable materials that is installed around the work area of a deleading, renovation or minor repair and maintenance project in such a way as to limit dust or debris generated by work performed within the work area to the space enclosed by the enclosures or barriers.

Department. The Department of Labor Standards, as established by M.G.L. c. 23.

DLS. The Massachusetts Department of Labor Standards, as established by M.G.L. c. 23.

Qualified Independent Translator. which training providers must use if they wish to have RRP training materials translated into languages other than English.

Reporting Physician's Statement. A written medical opinion from the physician who conducts the examination required by 454 CMR 22.09(4) which contains the following information:

1. The physician's opinion as to whether the applicant or employee has any detected medical condition which would place his or her health at increased risk of material impairment from exposure to lead;
 2. Any recommended special protective measures to be provided to the applicant or employee, or limitations to be placed upon the applicant's or employee's activities which concern potential exposure to lead; and
 3. Any recommended limitation on the applicant's or employee's use of respirators.
- Deleted definitions for “Commissioner,” “Division,” and “Emergency Renovation.”
 - Definitions and 454 CMR 22.03(1)(b). Broadened the definition of the term “Lead-Safe Renovation Contractor” and 454 CMR 22.03(1)(b) to allow such Contractors to carry out moderate risk deleading work where a licensed deleader supervisor or a certified lead-safe renovator-supervisor supervises the work and who has received additional training as specified at 454 CMR 22.08(4)(e).
 - Definitions. Broadened the definition of the term “Renovation Project or Work” to include work that constitutes a minor repair and maintenance activities.

- 454 CMR 22.01(5). Added a process by which a licensed contractor would put forward an alternate work method for approval by DLS.
- 454 CMR 22.04(1)(a)4. Inclusion of requirement for Corporations and LLCs to submit to DLS a Certificate of Legal Existence and Certificate of Good Standing, if any, along with its application for Licensure.
- 454 CMR 22.04(1)(a)10. and 22.11(2)(d). Added an attestation pursuant to which a contractor certifies that he is in compliance with the OSHA medical monitoring plan requirement in lieu of submittal of such plan.
- 454 CMR 22.04(1)(d). Added requirement for proof that the Lead Safe Renovator Supervisor successfully completed a Modertae-Risk De-Leading training to carry out Moderate Risk Deleading work.
- 454 CMR 22.04(2), 22.05(1)(g), 22.05(2), 22.07(2)(q) and 22.07(3). Added a provision to require forfeiture of the fee for applications which remain incomplete sixty days after the date written notice is sent.
- 454 CMR 22.04(3) and 22.07(4). Added provision where the Director has within 40 days of receipt of a completed application for licensure to approve or deny the application.
- 454 CMR 22.04(4), 22.05(2) and 22.07(3). Redrafted the sections on contractor license renewal so it is consistent with renewal for training provider licenses.
- 454 CMR 22.04(5). Inclusion that a Contract Waiver may be issued to an entity conducting Renovation Work in or on property owned by the entity.
- 454 CMR 22.07(1). Added a Scope to the section to require Deleading and Lead-Safe Renovation training programs to inform trainees of the need of a License for performance of such activities.
- 454 CMR 22.07(2)(b). Inclusion of requirement for training provider to submit Certificate of Legal Existence and Certificate of Good Standing, if any, along with its application for Licensure.
- 454 CMR 22.08(1). Inclusion of training requirement for persons participating in Renovation Projects as workers.
- 454 CMR 22.08(4)(d). Changed passing percentage on the examination from 70% to 72%. This allows for 18 out of 25 questions correct in order to pass.

- 454 CMR 22.09(4)(d)4. Added requirement for physician to provide employer a copy of the Reporting Physician's Statement regarding medical examination of employee.
- 454 CMR 22.08(4)(d) and (f). Separated the Lead-safe Renovator-supervisory requirements from the Deleader-supervisor course, making them two separate courses instead of a combined course.

In the most recent Lead regulation amendments in 2010, DLS had combined the Lead-safe Renovator-supervisor training course requirements with that of the Deleader-supervisor course requirements, which would allow a trained Deleader-supervisor to supervise both a Deleading or a Lead-safe Renovation project. DLS' rationale was that because the Deleader-Supervisor training consisted of 4 days of training, and the Lead-safe Renovator-supervisor is one day, that the Deleader-supervisor trainee had a higher level of training and could easily perform either deleading or lead-safe renovation work. In reality, training providers stated that students attending the combined Deleading and Renovator supervisor courses were more confused because of the similar but different work practices and terminology. In addition, training providers stated that their 4 day Deleader-supervisor course was already jam packed with information, with very little "spare" time. The additional Reno-supervisor topics DLS required to be included was just too much information and material to be packed into the same time frame. At least one of the training providers requested DLS to allow them to separate out the supervisory responsibilities between the two courses and have a separate and distinct training course for each type of supervisor. With separating out the different supervisory requirements, DLS will parallel the EPA requirement to have a separate and distinct course to become a Deleader-supervisor or a Lead-safe Renovator-supervisor.

- 454 CMR 22.11(1)(i)2. Clarified that a sign-in/sign-out log is not required for RRP jobs.
- 454 CMR 22.11(2). Added section on Work Practices and Other Requirements for Minor Repair and Maintenance Projects.
- 454 CMR 22.12(2)(a)2. Inclusion of requirement for supervision by Deleader Supervisor or Lead-Safe Renovator-Supervisor where a Lead-Safe Renovation Contractor carries out Moderate Risk Deleading Work.
- 454 CMR 22.13(1)(b). Inclusion of requirement for a Lead-Safe Renovation Contractor to maintain Training Certificates of Supervisors who supervised each Moderate Risk Deleading Project.
- 454 CMR 22.15(3). Added "Conditional Licenses" and "Consent Agreements" as additional administrative actions against License or Certificate holders or applicants.

Finally, we must coordinate with ANF to amend 803 CMR to permit waivers of fees for municipalities.

Costs, Benefits & Other Effects of Regulations

By permitting on line training, the amendments will make it easier for regulated parties to comply with the training requirements of the rule.

Incurred cost to currently licensed deleader-supervisors

Current deleader-supervisors, after their license expires, will need to attend a 4 hour Lead-safe Renovator refresher course to remain certified to supervise Lead-safe renovation projects. By separating out the Lead-safe Renovator-supervisor course requirements from the deleader-supervisor course, a deleader-supervisor must take a 4-hour refresher course to renew their certification as a Lead-safe Renovator supervisor. DLS issued 275 licenses for deleader-supervisors in FY13. DLS anticipates that the majority of these supervisors also supervise renovation projects and would therefore attend the refresher training. Training only is required to become a Lead-safe Renovation supervisor; no other DLS license or certification is required. The training and certification for a lead-safe renovator-supervisor is valid for 5 years.

Incurred cost to new deleader-supervisors

New deleader-supervisors, who were previously allowed to supervise renovation projects with their deleader-supervisor training, would have to take initial Lead-safe Renovator-supervisor training to supervise renovation projects.

Training Providers

Only one licensed training provider will be minimally affected by separating out the renovation supervisory requirements. Of the nine licensed lead training providers that offer deleader-supervisor training, eight of them also offer the Lead-safe Renovator-supervisor training course. If this training provider wanted to offer Lead-safe Renovator-supervisor training, they would have to develop a course and submit it for approval.

Small Business Impact

The amendments to the regulation, by incorporating and adopting amendments to the federal regulations, will have no impact on small businesses beyond the impact that the federal regulations would have if administered and enforced by the federal government. Renovation, repair and painting contractors who perform this work in residences built before 1978, or in child-occupied facilities, where more than de minimis amounts of lead paint are found, will

continue to be required to be licensed (contractors) or certified (supervisors) and to comply with specific worker protection, medical monitoring, work practice, recordkeeping and job clearance verification requirements.

Outreach to interest groups, advocates, and affected populations, and feedback

DLS has participated in meetings hosted by the organizations which represent entities regulated under the National Association of the Remodeling Industry (NARI), the local chapter of the Painting and Decorating Contractors of America, and the Lead Environmental Hazard Association (LEHA) to discuss the current DLS regulation, the EPA amendments, and what changes DLS would need make remain an authorized program by EPA.

In each of the meetings and discussions DLS has had regarding the proposed amendments to the Deleading and Lead Safe Renovation Regulation, DLS has consistently received positive feedback from the regulated community that the DLS requirements are not overly burdensome. DLS has also consulted with the EPA regarding the proposed amendments and will submit the proposed regulations to EPA for its information.

Civil Rights Impact Analysis

DLS has conducted a thoughtful review of the proposed regulations and has determined that the generally applicable licensing and regulatory scheme would have no adverse or disparate impact on a protected class. In addition, as provided above, DLS has engaged in outreach to a broad cross section of stakeholders and state agencies, none of whom have raised the issue that promulgation of the proposed regulations would result in disparate treatment or adverse impact on a protected class.